UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

THE SHERWIN-WILLIAMS COMPANY, Plaintiff, v. JB COLLISION SERVICES, INC., et al., Defendants.	No. 13-CV-1946-LAB 13-CV-1947-LAB August 8, 2014 7:30 a.m. San Diego, California
AND RELATED COUNTERCLAIMS	

TRANSCRIPT OF DISCOVERY HEARING
BEFORE THE HONORABLE WILLIAM V. GALLO
UNITED STATES MAGISTRATE JUDGE

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SAN DIEGO, CALIFORNIA, AUGUST 8, 2014, 7:30 A.M.

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THE COURT: This is Sherwin-Williams v. JB Collision. Sherwin-Williams versus JTT, Case 13-CV-1946 and 13-CV-1947. We're here this morning on a discovery dispute. I'll ask the attorneys to state their appearances for the record.

MR. WILSON: Jeff Wilson on behalf of the plaintiff, Sherwin-Williams Company.

MR. MURRAY: Michael Murray also on behalf of Sherwin-Williams Company.

MR. NORDLUND: John Nordlund on behalf of Defendants JB Collision Services Inc, JJT, Inc., and John Tyczki.

THE COURT: All right. Let's get started. Let's take these one at a time. The first -- the first dispute is a request for a production of documents, see the repair orders, invoices, identity of vehicle owners, insurers and other parties.

MR. WILSON: Yes, Your Honor.

THE COURT: And as I read the joint statement, I didn't get the sense that -- that the defendant JB or JTT objected all that much to the production of them. They just wanted some -- some protection in the production of them by having top cover from a court order that said to turn them over, so.

MR. NORDLUND: That's correct, Your Honor.

THE COURT: Mr. Nordlund, is that it?

MR. NORDLUND: Yeah, there's third-party privacy concerns with the customer information. We are not entitled to waive those third-party rights, so we feel that there is a need for a court order.

THE COURT: All right. I do see that this information is relevant to -- to the litigation at hand. I think the plaintiff has -- has the right to identify these vehicle owners that may have had problems with their repair job, with the paint in the repair and to contact them and see what's going on.

So I'm going to overrule the objection on that particular request and order that the defendant provide, respond thoroughly to the request made by the plaintiff.

MR. NORDLUND: Yes, Your Honor.

MR. WILSON: Thank you.

THE COURT: All right. Let's move on to the next one, which is interrogatory number 12 to both JB and JTT.
Mr. Nordlund, why don't you go ahead.

MR. WILSON: You want me to -- however you want to do it, it's our --

THE COURT: They've objected to providing the information, so I'm going to let them go first.

MR. WILSON: Okay.

MR. NORDLUND: Thank you, Your Honor. Interrogatory number 12 seeks information regarding all purchases made from other manufacturers and suppliers other than Sherwin-Williams from January -- oh, sorry, trying to find the actual language, from January 2013 through the present.

THE COURT: January 2013.

MR. NORDLUND: In our response, JB Collision, JJT Inc and John Tyczki each verified that through March 2013 no products from any other suppliers and manufacturers were purchased or used.

That is now after that term -- apologize, Your Honor -- sorry, Your Honor, I tripped myself up. Let me start over, if I may.

There's three interests that or three objections we primarily raised, one is third-party confidential trade secret information, second is that the information is not relevant and not -- the request is not reasonably calculated to lead to discovery of information. And, third, that it's unduly burdensome.

THE COURT: What was the third one?

MR. NORDLUND: That it's unduly burdensome. With regard to the confidential trade secret information, it seeks information such as tracing its discounts, et cetera, from defendant's current suppliers.

Now with regard to the relevance issue, in a verified response, defendant stated that they exclusively used

Sherwin-Williams products from September 2008 through March 2013. That's the entire relationship of the contracts between defendants and Sherwin-Williams.

Therefore, to the extent that Sherwin-Williams claims that that information is relevant to their contract damages, it's not -- it's not probative because contract damages can be determined through the terms of the agreement which their claim is based and also through a course of conducts with defendants.

Now also Sherwin-Williams raises the issue of Spies Hecker, a relationship with a competitor, however, they state that -- they argue that defendants had a contractual relationship with Spies Hecker at the same time they had a Sherwin-Williams -- a contract with Sherwin-Williams, that's just incorrect.

The relationship they're speaking about is actually with Keystone Automotive Industries, which was a contract that they had back in 2008 through mid -- through mid 2008. That agreement we actually terminated in order to enter into the agreement with Sherwin-Williams. So there is no other contract that was between Spies Hecker and Sherwin-Williams during the contracts at issue. Though defendants currently contract with Spies Hecker, they did not do so until terminating the contract with Sherwin-Williams. And, third, Your Honor, Sherwin-Williams makes allegations that this information is relevant to defendant's quality allegations regarding the quality of Sherwin-Williams paint and to show that other products are of equal quality to Sherwin-Williams.

It's not relevant to their point, Your Honor. The documents and information requested in both interrogatory number 12 and it's also -- request for production number 10 also seeks the same information seeks purchase information, product information such as dates of use, dates of purchase, the amount purchased, that won't show any quality information. And finally leading to my next point, Your Honor, it's -- the unduly burdensome is because it doesn't show those quality issues, it's also unduly burdensome to compile that information.

Each date of use of each product from a manufacturer or supplier, from an other than Sherwin-Williams since March 2013 to the present or the date of each purchase of each product from any manufacturer other than Sherwin-Williams since the termination of these contracts, in order to do so defendants will have to compile large volumes of documents, of invoices, purchase orders, and everything of all products purchased and used since the termination of these agreements in order to reply to those requests.

And because that information will not show information such as quality information, it's -- it's unduly burdensome. And there are also less burdensome means of obtaining the information regarding whether there were quality defects with

Spies Hecker paint compared to Sherwin-Williams paint if that's a relevant question at all in this case.

And as -- by deposing the painters and the managers and John Tyczki himself, which I'm sure Sherwin-Williams intends to do, ask them if there's ever -- under oath, if there's ever been any quality defects with Spies Hecker if that's the information being sought.

Thank you, Your Honor.

THE COURT: All right. Mr. Wilson.

MR. WILSON: Thank you, Judge. So what I've heard is that the objection is to relevancy, trade -- that the information is a trade secret and that it would be unduly burdensome for the defendants to produce, I'd like to address each of those in order, but first starting with the trade secret.

They've identified nothing that would be a trade secret or proprietary in nature that would not be cured by the stipulated protective order. I don't even frankly know what documents there are to know whether or not there's something that's a trade secret in the type and amount and nature of their purchasing post contract.

So unless they can identify something, just general competitive information of another company, Spies Hecker, is adequately remedied by the stipulated protective order that both sides have used for that production.

As to relevance, this information is highly relevant. It strikes at really the heart of many of these allegations brought against Sherwin-Williams in the counterclaims and the defenses to our complaint.

For one they -- I want to clarify that they say that the contract that JB and JJT had with Keystone Automotive at the time or right before entering into the Sherwin-Williams contract, you know, that contract was not for the purchase of Keystone paint, there is no Keystone paint. Keystone is an exclusive jobber, a distributor for Spies Hecker paint. They were a Spies Hecker customer, JB, JJT, at the time and they had an exclusive contract with Keystone to buy exclusively Spies Hecker paint for their company in their shops and that was at the time that we entered into the contract in 2008.

Now that right there is a violation of one of the warranties and representations made in the contract that JB made at the time in 2008 and that representation was that entering into our agreement would not impair any other obligation, would not cause you to breach any other contract. Again, we find out in this case in the discovery process that they, in fact, had a contract at that time with a competitor through a jobber called Keystone Automotive or auto supply.

So I want to clarify that. We found out in discovery also that in 2012 Keystone filed the lawsuit in the superior court of California here against the defendants for breach of that contract. And in -- that right there, by the way, is a violation of our contract, they didn't notify us of that lawsuit and they're required to.

But be that as it may, in 2012 they were sued, they entered into arbitration by a motion from opposing counsel's firm actually representing JB, JJT, to enforce an arbitration agreement. That went into a private arbitration, and then I don't know the results of the arbitration, that's the subject of another request, but shortly thereafter is when they terminated our contract and they resumed buying Spies Hecker paint.

Now, maybe those are just coincidences and they're not causally related but what they're buying now from Spies Hecker is highly relevant to that entire sequence of events. It's also relevant because they've placed it at issue in this case. They are arguing that -- it's in the paragraph 20, and we've pointed this out, that once they switched to Spies Hecker in 2013, they did not experience the problems with quality that they're alleging Sherwin-Williams products presented and those were not experienced using Spies Hecker.

They come out and that's part of their allegation. They also allege that during the contract with Sherwin-Williams when our products failed allegedly, we allowed them to use another company's paints, Spies Hecker, to fix our problems. We want to -- we want the information to back that up and we want to be able to refute that. And as to -- and I note as counsel mentioned in RFP 10, which is further down in the joint statement, the information is separated, interrogatory two, from the time of terminating our contract to now and RFP 10 relates to the beginning of our contract through its term.

Both of those periods are, you know, require examination. But as to this interrogatory 12, their purchases today -- from the time they started purchasing in 2013, if that's when it was when they breached our contract until today, we want to see what they're buying, whether it's comparable, and whether that argument, that -- and they're comparing apples to oranges and whether, in fact, they have any defect issues that they're raising with Spies Hecker and just like they're now post hoc raising with us, we want to know that.

And who knows, it could lead to much more discoverable and admissible evidence and lines of inquiry, not the least of which is did they switch with us, maybe part of a deal in the arbitration, or is it that they got a better deal from Spies Hecker? Did they get cheaper products? Did they get better discounts? And is that the reason that they left us? And if so, we're absolutely entitled to take that discovery.

And so relevance is a low bar anyway. And we're, you know, when we were here last time, much of the discussion was about not relevance because of its -- the liberal interpretation of -- and definition of relevance, we were talking a lot about how can we narrow, how can we get to documents that we know either exist or don't and produce them.

That's a far different type of objection and different dispute than saying we don't believe that something is relevant and we want you to come into court and describe, explain your argument, explain your theory of the case before we're going to either agree with you that something is relevant or we're going to make you get an order.

That's not a proper objection. We shouldn't have to lay out the course of our defense and/or prosecution of our claims just to get to very relevant information, so I can't imagine and I haven't heard anything here that would render any of this information not relevant or not reasonably calculated to lead to the discovery of admissible evidence.

And then as far as unduly burdensome, I can't even grasp how that could be burdensome when they're saying the better way to get at this information is to take a deposition of Mr. Tyczki or one of their painters. If I asked Mr. Tyczki or one of their painters, tell me about your paint purchases now or since you terminated the Sherwin-Williams contract, they would probably say, well, I could give you some generalities, I could tell you generally what we do and they might object to relevance, I don't know.

But that is going to be extremely burdensome on a witness to try to disgorge all of that information, this is -- these are numbers and facts on a page. They can easily be printed out and sent to us. We're talking about their -- the types of information they've already sent to us about our purchase -- their purchases of our products. They can just print out from their computer the same information (inaudible) from Spies Hecker and any other company that they are buying from now.

So, again, I don't see relevance, burdensome, I haven't heard anything that actually is a valid objection to what they've placed at issue as a defense to our complaint and as part of their counterclaim in their paragraph 20 when they compare the defects allegedly in our products to the high-quality products that they're buying now from their current supplier.

THE COURT: So I have a question, what difference does it make what other company or product JB or JJT began using when they terminated the contract with you? The contract was terminated for whatever reason, whatever their motives, whether the motives were because of quality issues with Sherwin-Williams paint or because -- was it Spies Hecker?

MR. WILSON: Yep.

THE COURT: Spies Hecker was going to give them a better deal on the paint. We're talking about a contract dispute. So what difference does the motive make?

MR. WILSON: If they had not raised the defenses that they're raising, if they had not brought the counterclaims they're bringing, then motivation would not be maybe as important. It would be simply a question of how do you interpret a provision of the contract, for instance, but here what they're saying is they're excused from their breach. They're excused from the early termination of this contract with Sherwin-Williams because of product defects that they did not have and did not experience with the paint company they replaced us with and we don't believe that's true.

Secondly, they say that we terminated, not because of a difference -- although one argument they've made is about interpreting the term of the 1.3 million dollars, generally they're saying we terminated and had the right to terminate because of quality defects.

And what we think and what we're -- we would like to examine is whether that's a lie and whether it's a lie to cover up what the real reason is, which is perhaps they made a deal in arbitration and they had to go back to their exclusive supplier prior to entering into our contract, or maybe it's a lie because they got a much better deal and this is about terminating our agreement to go to a cheaper product and not because of -- because of some quality defect. We don't --you know, we don't take their statements at face value and say, well, okay, we'll stop there in our examination.

It's if, you know, it's relevant on a number of grounds, those being some of them. And the other part, and it might be jumping ahead a little bit, but as they mentioned in RFP 10, the purchases during the term of the contract, they allege in the complaint that they had to buy Spies Hecker paint to fix cars that our product caused some problem with. That we don't believe is true.

But if it's true, show us, you put it at issue, give us the information. We want to know what documents there are to support that. We also want to know, and I appreciate that Mr. Tyczki has verified that I haven't purchased any other competitors paint during the term of the contract, even though they then say except we do purchase -- we had to purchase Spies Hecker at times to fix the problems with Sherwin-Williams. That's a contradiction I want to examine.

But I don't want to take his word for it, I want to know document evidence whether or not they were, in fact, abiding by the exclusivity terms. Because if they weren't, that's another breach of the agreement and it might be a substantial breach that -- that is a different -- causes, you know, us to look at this differently and it may be a first substantial breach that is a defense to this counterclaim they've asserted.

There could be a number of reasons why it's relevant, but if the reason these purchases are relevant are driven by and they are -- the reasons are created by their defense and the counterclaims they've asserted.

THE COURT: Okay. Mr. Nordlund, doesn't all that sort of make sense that on occasion you have alleged that you've had to use --

(Cell phone ringing.)

MR. NORDLUND: I apologize, Your Honor. I don't know why that's on.

THE COURT: Because you left it on. That's why it's on.

MR. NORDLUND: No, I apologize, Your Honor.

THE COURT: So doesn't it make sense that since there are some allegations in the -- the second amended complaint, second amended counterclaim that at times you had to use a product other than Sherwin-Williams and -- specifically Spies Hecker, to correct a bad paint job using Sherwin-Williams, so doesn't it seem to make sense that Sherwin-Williams should have information about the times when that happened, learn about the paint that was used, how it was used, when it was used?

MR. NORDLUND: Your Honor, if there -- I did concede that if there are -- the times in which Sherwin-Williams allowed my client to purchase Spies Hecker paint to cure the remedies because these -- Sherwin-Williams paint -- Sherwin-Williams wasn't curing the defects in their paint, if there are documents to back that up, yes, we will -- I mean, I will agree to produce those.

Now, my client, however --

THE COURT: Can I ask -- I'm sorry to interrupt, but can I ask the question, on those occasions, now, Mr. Wilson says that that never happened, that we never authorized JB or JJT to use the Spies Hecker product to correct one of our bad paint jobs, but you're saying that they did.

MR. NORDLUND: Yes, Your Honor.

THE COURT: So when that happened, how did you get that paint, that Spies Hecker paint? Did Sherwin-Williams provide it to you or did a Spies Hecker representative come and bring it to the shop?

MR. NORDLUND: I'm sorry, Your Honor, I don't know that detail.

THE COURT: All right. Okay. Go ahead. You were saying something.

MR. NORDLUND: But my client has informed me that these occasions did occur, that there were defects on certain paint jobs and Sherwin-Williams agents, whether it be a sales representatives or other agents of Sherwin-Williams did allow and authorize him to purchase Spies Hecker paint and use that paint in order to cure those defects.

My client has also informed me that he doesn't have documentation. However, I will follow up, and if we do have discovery, upon further investigation he will produce those documents.

THE COURT: So, Mr. Wilson, that seems to be a familiar refrain with respect to some of the issues here today is that JB, JJT say they don't have these documents.

MR. WILSON: Well, if -- I'm sorry.

THE COURT: And assuming that's true, what more can they do?

MR. WILSON: If they don't have documents to anything that we've requested, there's just -- they don't exist, all they have to do is state that in a verified response and we move on. And if later they produce -- they find documents and produce them, we'll examine whether or not, you know, the circumstances of that, we're not asking them to create things that they don't have.

I will say though that on a couple of occasions, and we've been able to work those out, we've said all we need is not Mr. Nordlund or Mr. Sorrentino telling me that, just put it in an interrogatory response verified by your client that these don't exist or that you have everything and then we'll move on.

THE COURT: And they haven't done that yet?

MR. WILSON: Well, on some things they have, but on, for instance, this issue that we're here on with interrogatory 12, RFP 10, they're saying, I mean, if there's some documents that don't exist, okay, I haven't heard that.

What they're saying is you're not entitled to them because they're not relevant. And we have them -- all of the post contract documents, we have them, we're just not giving them to you because we don't want to. And, you know, that's -- that's a different type of objection, of course.

THE COURT: I see a couple -- I see some differences between interrogatory 12 and -- and the RFP 10. Interrogatory 12 seems to deal with -- although the timeframe begins in January 2013 and it's my understanding that the contract terminated in March of 2013.

MR. NORDLUND: There's a dispute over that, Your Honor.

MR. WILSON: They've recently filed an errata changing the admission. They admitted that they stopped buying in January 2013 in their answer and they've just -- they filed like an errata sheet saying that they deny that now and that they believe it's March.

It's March, January, it's right around that timeframe.

THE COURT: Okay. So what we're talking about here in your interrogatory is the time when the contract essentially came to an end between the parties?

MR. WILSON: That's correct.

THE COURT: Whether it's January, February, or March, that's really what you're getting at?

MR. WILSON: That's correct.

THE COURT: And so what you want to know is what products are they getting once the contract between

Sherwin-Williams and JB, JJT came to an end?

MR. WILSON: Yes.

THE COURT: And then RFP 10 talks about the life of the contract essentially.

MR. WILSON: That's right.

THE COURT: All right. It seems to me that with respect to 12 that the information that Sherwin-Williams is seeking is relevant to the second amended counterclaims, given the earlier contract with Keystone back in 2008, which was the supplier for the Spies Hecker paint that was terminated.

And as I understand it, that contract was terminated early to allow JB and JJT to enter into a new contract with Sherwin-Williams in roughly September of 2008.

MR. NORDLUND: Correct, Your Honor.

THE COURT: That existed till early 2013, whether it's January, February, or March. And, in fact, there was a lawsuit that was filed by Spies Hecker or Keystone in 2012 about that -- that earlier contract that came to an end, is that right?

MR. NORDLUND: Correct, Your Honor.

THE COURT: And so all that appears to be a little -- a little sinister or suspicious how the contract existed in 2008 with Keystone came to an end and then there's a lawsuit and now JB is back purchasing the Spies Hecker product.

MR. NORDLUND: Your Honor, if I may interject, just to -- in case this alters the Court's mindset at all, but they have also requested all of the documents from the Keystone arbitration in that case. I am working with my staff to produce all of those documents. So anything related to the Keystone lawsuit and the prior relationship with Spies Hecker is going to be produced.

THE COURT: All right.

MR. NORDLUND: I just wanted to make you aware of that.

THE COURT: Okay. Now, Rule 33(d) of the Federal Rules of Civil Procedure allow you to respond to an interrogatory by specifically identifying documents that may answer the question as opposed to just writing out longhand, we purchased on X date at this price from this person, on this date at this price from that person, you just provide the documents, specifically identifying the documents.

And if they've already been produced, you have to identify, you know, specifically by number or Bates stamp or whatever the nomenclature is that you used. It seems to me that this interrogatory is relevant and may lead to discoverable information for the arguments that were made by Mr. Wilson.

Now, this is a tentative ruling, we're not finished yet, and I may, after further review, change my mind on that. I'm giving you a heads up that that's most likely where I'm going on that one.

And if -- if you don't have documents, then you must indicate that you don't have the documents in a verified response, your client doesn't have the documents.

Okay, let's move on to number -- the third dispute, that's interrogatory number seven and it's identify all the instances of defendants repainting vehicle because of alleged quality issues with Sherwin-Williams, and here's another one of those areas where it seems there are a lack of documents by JB and JJT.

So Mr. Nordlund, why don't you go ahead and respond to this.

MR. NORDLUND: Thank you, Your Honor. For -- during the contract term when Mr. -- when defendants repainted vehicles, they didn't specifically document that vehicles were being repaired, so there are no documents that could be used in his possession or in their custody, possession or control in order to refresh the recollection or to provide the information requested.

Defendants do have a present recollection of a short period of time once they started making warranty claims to Sherwin-Williams. Mr. Tyczki took the -- what are repair orders and they have a dollar amount providing the damages to Sherwin-Williams in order to get reimbursed for the repaint job.

Those he does have a recollection of, and we can provide that information. We've told Sherwin-Williams we would provide a list of that information, but that information has also been -- that information has also been produced in the repair orders in correspondence between my client and Sherwin-Williams that were produced in the documents.

The invoices and repair orders in the prior request by Mr. Wilson to have them unredacted, those are documents supporting those warrantied claims. So those are supporting the instances in which repainting the vehicles happened after the contract term.

However, there are no specifically identified repair orders that show when the repainting took place during the term of the contract and our client just doesn't have a present recollection of all instances in which they took place, so he can't fully answer that interrogatory.

Now to that point about refreshing recollection and not having documentation, we believe Sherwin-Williams does have some documentation that would refresh his recollection and allow him to answer that interrogatory. For instance, the key QRs and any what we've been terming as goodwill adjustments when he was given replacement product in order to do a repaint job or other documents supporting the complaint which was addressed in the last hearing, Your Honor.

To my knowledge those documents still haven't been produced, and so once those are produced and reviewed by Mr. Tyczki, it may refresh his recollection about any prior instances prior to the first warranty claim he made after the termination of the contract but, again, at this time he doesn't have any documentation to refresh his recollection in order to respond to that interrogatory.

THE COURT: There were objections made to the interrogatory on several grounds, burdensome being one of them, do you -- I mean you do recognize that this particular interrogatory really goes to the heart of the -- this lawsuit, and that is, you know, what vehicles had to be repainted because of a quality issue with the Sherwin-Williams product, do you concede that or agree with that?

MR. NORDLUND: No, we do agree with that, Your Honor. And if we had the information we'd freely give it.

THE COURT: So there's no question that the interrogatory seeks information that is -- that is extremely relevant to the lawsuit. And what I'm hearing is that your client didn't retain documents sufficient enough for him to be able to identify all the instances where vehicles had to be repainted because of the quality problem with the Sherwin-Williams product.

MR. NORDLUND: Correct, Your Honor.

THE COURT: What did he do? What was his response to this interrogatory? I mean, I see what was here and there's objections, but it doesn't indicate to me that he made any effort to provide information that he did have available to him or that he had recollections of.

MR. NORDLUND: Right, Your Honor. And we didn't want to give a qualified response because we didn't want to waive any objections, for one. But in the meet and confer we informed Mr. Wilson and his associate that we were willing to provide a list of instances that were within that time period where he did make warranty claims and we informed them we would be willing to peruse that list and have it verified.

And also so state what is stated here under the base of their objection that was also done in e-mail correspondence between counsel and each time we said we were willing to put this in a supplemental response, but they kept saying that's not good enough.

So that's why we never supplemented that response, Your Honor.

THE COURT: Mr. Wilson.

MR. WILSON: Yes, Judge, so I'll take the last thing first. They -- opposing counsel did offer to just give us a list in response to this interrogatory, a list of the warranty claims. We know that. We know what warranty claims they've made, they've made about 30. In four and a half, five years they've made about 30. We know exactly what those are. We have documents regarding those.

And I told them if they want to put -- if they want to list that out in an actual interrogatory answer, go ahead, but that's not all we're asking for, of course. And -- but, well, let me step back. What we're asking for is for you to identify the basis for all of these allegations in their second amended counterclaim and in the counterclaims before them related to instances of having to repaint vehicles because of alleged quality problems.

They have littered this entire counterclaim with allegations, we've listed out multiple ones in paragraph 20 and 67 and so on and -- 27, about how they -- throughout the term of the parties relationship they had to repair and repaint vehicles and they had the cost of car rentals and detrimming and stripping and primer and repainting.

And at one point they estimated that the -- the amount of damages could exceed 20 million dollars because of all of this repainting requirement. So they've also -- as we all know -- have come into this court and asked for very sweeping discovery based on what they allege is this pattern of having to repaint all of these cars because our products failed so much. And so, therefore, we need to see if this is a nationwide problem and see how many times you've been sued and all that information.

And so this request, as Your Honor has already stated, it goes to the heart of that entire line of -- of discovery from them, but the counterclaims, the defense to our complaint, and it's -- and so if the answer is -- the repainting we're talking about in all of these allegations are the 30 identified warranty claims, 10 before the lawsuit, 20, 22 now since the lawsuit then state that, state that that's what you're talking about, and they said, well, we're not going to agree to that. We aren't saying that it's limited to that. We're saying that there are all these other instances.

So we said so then explain, identify what that is. If the answer is we don't know, we have no documents, we can't identify anything, we can't give you the make of a car that we're talking about, but we know it all happened then just say that. Put that in writing, sign it, don't object to all these, you know, on a basis of vague and ambiguous and everything else that they've objected to, just say we don't -- we can't tell you.

We filed a lawsuit alleging that we've -- we're facing 20 million dollars of liability and exposure because of repainting and repairing these vehicles due to your products and say that we did that but we can't tell you anything more than the 30 warranty claims that we did submit to you. We'll take that and then we'll deal with that. But if what they want is to say, no, we're going to maintain an objection, we're going to say we can't identify presently -- we don't have a present recollection of which cars they were, but we'll give you the identity of the 30 warranty claims that we submitted, they're still hedging.

If they don't know, they don't know. State that they can't say that. State that they don't have that information to back up these sweeping allegations and then we will file whatever motions, dispositive motions that we need to based on the lack of evidence to substantiate that. But this -- the answers that we have and the objections that we got to interrogatory seven aren't there yet. We're not to that point where there's -- they're willing to put in writing we can't tell you, we don't have that information.

THE COURT: I have to agree, Mr. Nordlund, with Mr. Wilson's argument on this -- on this point. As I said, this particular interrogatory to JB and JJT, it really goes to the essence of this lawsuit. And so any objections to the -- to the interrogatory are overruled to the extent that you raise objections on burdensome or vagueness or ambiguousness. And your client is going to have to answer these two interrogatories. And as Mr. Wilson points out, if the only information that your client has is as to the 30, 31 or 32 warranty claims and that's all that he has, then he should say that and he should say that he doesn't have any information as to any other repair jobs that he had to do over again or paint jobs that he had to do over again because he just simply doesn't have the documentation. He didn't keep the records. He can't answer it. He's going to have to do that.

You can't -- and then supplement it if those records ever become available. All right. Again, that's a tentative ruling, but that's where I'm headed with that.

All right. Now moving on to RFP number 10 to JB and JJT. All documents that constitute, reflect upon or relate to all paint related products purchased by you from any manufacturer other than Sherwin-Williams from September of 2008 to May 2011 till the present.

Now, as I understand it, at least from the beginning of the two contracts, one with JB and the other with JJT up until January, February, March of 2013, whenever the contract was terminated, your client's response is that he bought exclusively from Sherwin-Williams?

MR. NORDLUND: Correct, Your Honor.

THE COURT: Is that correct? Yeah, go ahead.

MR. NORDLUND: Well, yes, Your Honor, but -- yes. Except for the instances when they were authorized by Sherwin-Williams to purchase Spies Hecker.

THE COURT: I understand that, okay. Anything else you want to say about this?

MR. NORDLUND: No, Your Honor, I believe that was fully discussed when we discussed the prior --

THE COURT: Yes, I agree. I think that this is also a relevant request for production of documents based upon the representations made by Mr. Wilson and why it is important to understand what's going on with -- with any purchases made by JB or JJT of products other than Sherwin-Williams, understanding that there are those instances you say during the term of the contract where Sherwin-Williams, in fact, authorized the use of a Spies Hecker product.

And this request for production of documents also deals with the end of the contract up until now. So we discussed this with the earlier interrogatory, my tentative ruling is essentially the same.

And if I'm not mistaken I think that -- that ends it.

MR. WILSON: That's correct, Your Honor.

MR. NORDLUND: That's correct.

THE COURT: Counsel, do you have any other comments to make before we wrap up?

MR. NORDLUND: Your Honor, one thing I just want to bring it to your attention, some documents have been produced with attorneys eyes only confidential designation and we believe that more will be. And I also believe Sherwin-Williams also just recently, earlier this week, produced more documents produced with the attorneys eyes only designation. There are several categories of documents that we have already identified that we take issue with that high level of confidentiality designation.

We didn't put it in the joint statement, one, because of the short timeframe in drafting our section and also we completely matched your page limit in filing a joint statement.

As far as continuing and addressing the matter of whether documents are properly designated as attorneys eyes only or confidential under the protective order in this case, how should we proceed?

THE COURT: Well, I'd have to start with the protective order and see what it says. Generally a protective order has a process on how the parties would proceed if there is a issue, and I don't know if this one does.

MR. WILSON: It does, Your Honor. The party objecting to a designation can move to have that redesignated. We've done some discussions about that and if we can't agree, then I suppose that they can petition the Court for redesignation. There's certain documents that we have to have a EO, I'm not prepared to talk about them today, I don't even have that list in front of me. But there is that mechanism. It's in the stipulated protective order.

THE COURT: Do you know what paragraph that is of the protective order? I got it out now.

MR. WILSON: Yes, I can tell you it's, one second, let's see, it would be -- one second.

Do you have the docket number?

UNIDENTIFIED SPEAKER: It's 35.

MR. WILSON: Thank you. That's all I needed. Okay.

So paragraph seven states, at any time any party may apply to this Court for an order excluding specific documents from the protection of this order, provided, however, that upon objection either party through designations of documents described in section 2B, the party asserting the protection of the order must file a motion and show good cause for the protections of this order to apply to those to be 2 paragraph B documents, that would be 2B. I'm sorry, those are a subset of that, so as to the AEO documents, at any time a party can apply to the Court for an order.

MR. NORDLUND: And, Your Honor, I'm sorry, my question was more general as to how you would like us to proceed with this. Would we do another informal teleconference, would we reset a hearing and bring the documents for in camera review? That was my question. I apologize if --

THE COURT: How many documents are we talking about?

MR. NORDLUND: Six or seven different categories of documents and I'd say 70 to 150 pages.

THE COURT: 7250 pages?

MR. NORDLUND: 70 to 150 pages.

MR. WILSON: 70, 70 to 150.

THE COURT: Okay.

MR. NORDLUND: But there are specific categories of documents, Your Honor, so that's -- they can be broken up into a specific type of document.

THE COURT: Have you met and conferred on this?

MR. NORDLUND: Briefly, Your Honor.

THE COURT: Okay. Well, you're going to have to do more than briefly. Meet and confer, see if you can whittle down the objections that you might have to the -- to the designation or the overdesignation, then after that if you haven't resolved your issues as to all of them, then give us a call and we'll see how we're going to proceed at that point in time.

I might have you file another joint statement, may get on the phone with you.

MR. NORDLUND: Okay.

THE COURT: Most likely you'll have to file a joint statement with the Court, you know, identifying the objections that you have and, of course, the burden then is on the party seeking to maintain the designation, so if that's -- those designations are Sherwin-Williams designations, then Mr. Wilson would have the responsibility of, you know, justifying the designation, all right? But first thing you have to do is meet and confer and try and resolve it.

MR. NORDLUND: Yes, Your Honor. Just wanted to bring it to your attention that it's an issue that might arise.

THE COURT: Okay. All right, anything else?

MR. WILSON: No, Judge.

MR. NORDLUND: No, Your Honor.

THE COURT: All right. Thank you.

(The proceedings concluded at 8:30 a.m., August 8, 2014.)

TRANSCRIBER'S CERTIFICATE

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DATED at San Diego, California, December 8, 2016.

_/s/ CYNTHIA R. OTT
CYNTHIA R. OTT, RDR, CRR